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SPECIAL BOARD MEETING  
STATE OF CALIFORNIA  
INTEGRATED WASTE MANAGEMENT BOARD

JOE SERNA, JR., CALEPA BUILDING  
1001 I STREET  
2ND FLOOR  
SIERRA HEARING ROOM  
SACRAMENTO, CALIFORNIA

TUESDAY, NOVEMBER 8, 2005

10:00 A.M.

TIFFANY C. KRAFT, CSR, RPR  
CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 12277

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

BOARD MEMBERS

Ms. Rosario Marin, Chair

Ms. Rosalie Mul

Ms. Cheryl Peace

Mr. Gary Petersen

Mr. Carl Washington

STAFF

Mr. Mark Leary, Executive Director

Ms. Julie Nauman, Chief Deputy Director

Ms. Marie Carter, Chief Counsel

Ms. Jeannine Bakulich, Executive Assistant

Mr. Elliot Block, Staff Counsel

Ms. Nikki Mizwinski, Staff

Mr. Trevor O'Shaughnessy, Supervisor, State Agency  
Assistance Section

Mr. Pat Schiavo, Deputy Director

Ms. Tabettha Willmon, Staff

ALSO PRESENT

Mr. Roland Burkert, Roland Consulting, Inc.

Mr. Enrique Ochoa, City Manager

Mr. Walt Price, Mountainside Disposal

Mr. Ray Scott, Mountainside Disposal

Mr. Tim Tarver, Mayor, City of Arvin

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1 PROCEEDINGS

2 CHAIRPERSON MARIN: Good morning, and welcome to  
3 the Special Board Meeting of the California Integrated  
4 Waste Management Board. I understand our esteemed  
5 colleague Carl Washington is joining us momentarily.

6 Let me welcome everybody. Thank you so much. I  
7 will officially, for those of you that don't know yet,  
8 we'll have actually a formal invitation. But some of you  
9 might realize there's going to be five members up here.  
10 We're very, very happy to welcome Mr. Gary Petersen.

11 You understand you're going to be welcomed for  
12 the next three years, you know. So welcome, Gary, the  
13 Council member -- ha. You can be a Council member.

14 BOARD MEMBER PETERSEN: I'll do it all.

15 CHAIRPERSON MARIN: New Board member.

16 Would you please call the roll?

17 EXECUTIVE ASSISTANT BAKULICH: Mulé?

18 BOARD MEMBER MULÉ: Here.

19 EXECUTIVE ASSISTANT BAKULICH: Peace?

20 BOARD MEMBER PEACE: Here.

21 EXECUTIVE ASSISTANT BAKULICH: Petersen?

22 BOARD MEMBER PETERSEN: Here.

23 EXECUTIVE ASSISTANT BAKULICH: Washington?  
24 Marin?

25 CHAIRPERSON MARIN: Thank you. I'm here.

1           Okay. As I said, we have a quorum, and

2 Mr. Washington will be joining us momentarily.

3           Let me just state for the record that we are now

4 going to be holding a public hearing on whether or not to

5 impose penalties on the City of Arvin for failure to

6 implement its Source Reduction and Recycling Element.

7 This hearing will be a little more structured than our

8 typical agenda item hearings. And the process is laid out

9 in Attachment 1 of the item, which I will summarize

10 briefly. And I know the people involved are very familiar

11 the process.

12           In a moment, I'm going to ask everyone that plans

13 on testifying in this hearing to rise and be sworn in by

14 the court reporter as a group. After that, our staff will

15 make a presentation, during which the Board members may

16 ask questions. Representatives of the City of Arvin will

17 then make a presentation, during which the Board members

18 may also ask questions. Both staff and the City will then

19 have one more opportunity to present any information they

20 wish to rebuttal.

21           After the presentations are concluded, the Board

22 will go into closed session to deliberate on a decision.

23 Unless any Board members have any questions, I would like

24 to ask everyone that plans on testifying to stand so that

25 you can be sworn in.

1           (Thereupon witnesses were duly sworn by the  
2           Certified Shorthand Reporter.)

3           CHAIRPERSON MARIN: Thank you.

4           And let the record reflect that Mr. Carl  
5 Washington just joined us.

6           BOARD MEMBER WASHINGTON: I'm here.

7           CHAIRPERSON MARIN: Thank you. We just swore in  
8 the witnesses, if you will.

9           DEPUTY DIRECTOR SCHIAVO: Good morning. Pat  
10 Schiavo, Diversion, Planning, and Local Assistance  
11 Division.

12           And I'm here to introduce the item that is a  
13 Public Hearing and Consideration of the Imposition of  
14 Penalties Against the City of Arvin Pursuant to Compliance  
15 BR03-05. And Nikki Mizwinski will make the initial  
16 presentation.

17           STAFF COUNSEL BLOCK: Actually, I'm Elliot Block  
18 with the Legal Office. I'm going to start off here, but  
19 we want to turn on the Power Point presentation.

20           (Thereupon an overhead presentation was  
21 presented as follows.)

22           STAFF COUNSEL BLOCK: Good morning. I'm Elliot  
23 Block with the Legal Office. And I'm going to very  
24 briefly go over the legal framework of the hearing before  
25 us today before Ms. Mizwinski goes over the presentation.

1 --o0o--

2 STAFF COUNSEL BLOCK: Pursuant to Public  
3 Resources Code 41925, after a public hearing if the Board  
4 determines that a jurisdiction has failed to implement its  
5 SRRE, it shall issue an Order of Compliance with a  
6 schedule for achieving compliance. And that Compliance  
7 Order shall include those conditions necessary to  
8 implement the SRRE. In the case of Arvin, that Order was  
9 issued January 13th, 2004.

10 --o0o--

11 STAFF COUNSEL BLOCK: The Compliance Order that  
12 was issued required submission of implementation of the  
13 Local Assistance Plan by the City of Arvin. According to  
14 Public Resources Code Section 41850, if the Board finds  
15 after issuing that Compliance Order that the City failed  
16 to make a good faith effort to implement the Compliance  
17 Order, it is authorized to impose penalties up to \$10,000  
18 a day until that Compliance Order is implemented.

19 --o0o--

20 STAFF COUNSEL BLOCK: Just as an aside, the  
21 statute also provides that any penalties imposed are to go  
22 into a specific account to be used solely for assisting  
23 local governments in complying with these requirements and  
24 not to be used by the Board for administrative purposes.

25 --o0o--

1           STAFF COUNSEL BLOCK:   Simply put, the issues  
2 before the Board today are: Did the City of Arvin fail to  
3 make a good faith effort to implement the conditions of  
4 the Compliance Order? And if so, what is the appropriate  
5 penalty to be imposed for that failure?

6                               --o0o--

7           STAFF COUNSEL BLOCK:   One last bit of business I  
8 will do just for the record, the City was served with a  
9 notice of this hearing on September 20th, 2005, and they  
10 were also served with copies of the agenda item, the  
11 attachments, and the notebook that you all received as  
12 well and I'll place these into the record along with the  
13 proofs of service.

14                               --o0o--

15           MS. MIZWINSKI:   OLA staff conducted a needs  
16 assessment meeting with the City and outlined the scope of  
17 the Local Assistance Plan. On June 15th of 2004, the City  
18 Manager signed the Local Assistance Plan.

19                               --o0o--

20           MS. MIZWINSKI:   Staff have provided significant  
21 program implementation assistance from March of 2003  
22 through November of 2005. Please see Attachment 3 of the  
23 agenda item for a list of the assistance that is located  
24 in your binder.

25                               --o0o--



1 MS. MIZWINSKI: During the Compliance Order, the  
2 City missed six of ten due dates for program  
3 implementation.

4 On May 12th, 2005, Board staff advised the City  
5 that they needed to complete all of the remaining tasks by  
6 June 30th of 2005.

7 By June 30th, the City had completed four of ten  
8 programs.

9 --o0o--

10 MS. MIZWINSKI: As of June 30th, the City failed  
11 to implement the following six programs: Construction and  
12 demolition; recycling ordinance; conduct waste assessments  
13 for large waste generating businesses; and provide waste  
14 diversion technical assistance;

15 --o0o--

16 MS. MIZWINSKI: Expand commercial curbside  
17 recyclable collection citywide; and the City requested to  
18 amend its Local Assistance Plan and proposed an  
19 alternative commercial green waste collection program;

20 --o0o--

21 MS. MIZWINSKI: Also, to implement a recycled  
22 content procurement policy for all City offices and submit  
23 various reports and documentation.

24 --o0o--

25 MS. MIZWINSKI: Since June 30th, the City did

1 implement two of the six programs. However, as of  
2 September 19th of 2005, the following four programs had  
3 not been fully implemented: The C&D recycling ordinance;  
4 conducting waste assessments for large businesses; and  
5 providing waste diversion technical assistance.

6 --o0o--

7 MS. MIZWINSKI: Expanding commercial curbside  
8 recyclable materials collection citywide, and alternative  
9 commercial green waste collection programs.

10 --o0o--

11 MS. MIZWINSKI: Board staff have continued to  
12 maintain an open dialogue with the City and provide  
13 technical assistance for programs not implemented to date.

14 September 12th of 2005, the City hired a  
15 consultant to review the situation, provide  
16 recommendations and actions to complete the Local  
17 Assistance Plan. Since September 19th of 2005, the City  
18 had fully implemented three additional Local Assistance  
19 Plan programs.

20 --o0o--

21 MS. MIZWINSKI: As of November 7th, 2005, the  
22 City provided documentation that it has implemented all  
23 programs. However, Board staff would like to note that  
24 although the City has taken actions to implement its C&D  
25 ordinance, we have not yet received the weigh tickets

1 showing the C&D diversion.

2 -o0o--

3 MS. MIZWINSKI: Historically, the City has shown  
4 reluctance to make the efforts necessary to implement its  
5 programs in a timely manner. Board staff is concerned  
6 that the City's efforts to continue to fully implement  
7 these programs will wane. While continued implementation  
8 is explicit between all Local Assistance Plans, Board  
9 staff believes that including an explicit potential fine  
10 for this City is necessary given the City's efforts to  
11 date.

12 On November 7th, the City hauler faxed Board  
13 staff a letter confirming they are in negotiations with  
14 the City pertaining to their recycling services contract.  
15 And if the contract has not been successfully resolved by  
16 January 31st of 2006, some or all of the services will be  
17 discontinued by the hauler. Therefore, Board staff  
18 recommends the Board closely monitor the City to ensure  
19 programs continue to be fully implemented over the next  
20 year.

21 --o0o--

22 MS. MIZWINSKI: Statute requires the Board to  
23 consider these factors in determining penalties. There is  
24 good faith effort; natural disasters; budgetary  
25 constraints; work stoppages; failure of public agencies to

1 participate; alternative program implementation; diversion  
2 rate; time extensions or alternative diversion rates;  
3 impacts of construction and demolition waste.

4 --o0o--

5 MS. MIZWINSKI: The maximum penalty is \$10,000 a  
6 day from issuance of the Compliance Order, which for the  
7 City of Arvin is January 13th of 2004. There are three  
8 penalty ranges.

9 There is serious, which is no less than \$5,000  
10 per day, up to \$10,000 per day for failure to implement  
11 without reason or justification.

12 There is moderate, which is no less than \$1,000  
13 per day, up to \$5,000 per day for failure due to  
14 mitigating circumstances.

15 And then, finally, minor, which is up to \$1,000  
16 per day for failure to meet requirements to some extent.

17 --o0o--

18 MS. MIZWINSKI: Board staff determined during its  
19 review that the City did not make a good faith effort to  
20 implement its Source Reduction Recycling Element and its  
21 subsequent Local Assistance Plan.

22 --o0o--

23 MS. MIZWINSKI: The City missed six of the ten  
24 Local Assistance Plan due dates, and until yesterday had  
25 not fully implemented all of the remaining Local

1 Assistance Plan tasks. The City had been given ample time  
2 to complete all of the programs listed in their Local  
3 Assistance Plan, but had failed to do so.

4 --o0o--

5 MS. MIZWINSKI: As of yesterday, the City  
6 demonstrated completion of all programs. There are three  
7 options.

8 There is Option 1, the one-time penalty for  
9 failing to meet the June 30th, 2005, Local Assistance Plan  
10 due date.

11 There's Option 2, which is a daily penalty which  
12 may be assessed if the jurisdiction fails to implement its  
13 past due program tasks by November 30th of 2005, which by  
14 the way as of yesterday they have implemented all of their  
15 programs.

16 And then Option 3, to ensure continued  
17 implementation, impose an additional penalty if the City  
18 fails to continue implementing its Local Assistance Plan  
19 tasks by December 31st of 2006.

20 --o0o--

21 MS. MIZWINSKI: Board staff is here to answer any  
22 questions.

23 CHAIRPERSON MARIN: Thank you, Nikki.

24 Are there any questions for staff right now?

25 Okay. Thank you, Nikki.

1           Who's going to come first from the City of Arvin?

2           I'm going to request that each one of you  
3 independently state your name for the record and your  
4 title.

5           MR. TARVER: I'm Mayor Tarver from the City of  
6 Arvin.

7           CHAIRPERSON MARIN: Mayor, thank you very much  
8 for taking the time to be here with us.

9           MAYOR TARVER: Thank you very much for having us  
10 here.

11           I'd like to start off by saying thank you to your  
12 staff here, Nikki and Tabatha. They've been in this thing  
13 with us. Unfortunately, we didn't meet the time line that  
14 was given to us. But I'm here today to support our team.  
15 We've got some additional staff on board, and we've made  
16 some great leaps and bounds since we obtained that staff.

17           City of Arvin, I've been there, my parents have  
18 been there, since 1948. I was just elected this year with  
19 a landslide. But we've had definitely some unpleasant  
20 experiences with different members from the Council,  
21 Mayors, Mayor Pro Tems that's put us in a bad position.  
22 And from the time I've been elected, this is not my first  
23 rodeo. I mean, it's one fire after the next.

24           But I think that we have a grip on this thing  
25 now. We have some new Council members. We have new

1 staff. And we're moving forward. And it's been a  
2 positive thing from '04 up until now. This is another  
3 hurdle that the City of Arvin is going to have to get  
4 over.

5 I hope that you find it in your heart to be  
6 reasonable with us. We understand that, you know, we've  
7 kind of dropped the ball. But at least consider taking it  
8 into your heart to excuse us for this. And I'd like to  
9 apologize for that. And give us a chance to make this  
10 thing right to you. Because I feel we're in it together.  
11 I spoke with Nikki and Tabatha, and I definitely feel that  
12 they're in it along with us. But it's just a matter of  
13 getting the right players, the key players in the game to  
14 win the game. And now we have that, I think that we'll be  
15 in a lot better situation. And I hope we don't have to  
16 come back here again like this.

17 And with that, I'll introduce our City Manager to  
18 you. Thank you.

19 CHAIRPERSON MARIN: Mr. Ochoa, before you speak,  
20 if I may.

21 You have no idea how relieved I am of your  
22 comments. As a former Mayor, you have a former Assembly  
23 member here. Your presence here today speaks volumes.  
24 And the fact that you're new gives the City an incredible,  
25 if I may, a leeway. Okay. It means a lot that you're

1 here. We take that very seriously. Because you're a  
2 representatives of the City.

3 MAYOR TARVER: Thank you very much.

4 CHAIRPERSON MARIN: You coming in, and I like the  
5 attitude that you're taking. It's the recognition that  
6 the City has failed in its efforts. I appreciate that a  
7 lot. I think everybody here appreciates that recognition.

8 Because you're new, there may be a learning curve  
9 for you. I used to be a mayor of a city. But it is  
10 extremely important, and we have had unfortunately some  
11 mayors come before you. And once they understand, the law  
12 is very clear. And when Cities for whatever reasons fail  
13 to meet the law, we have the tools to make you comply and  
14 penalties that only hurt your city. So the fact that  
15 you're coming here and the recognition that the City has  
16 failed goes a long way with us.

17 Now, I can tell you because of the lack of  
18 progress and the lack of accomplishments, we have to take  
19 that very seriously. We're going to have to hold you, you  
20 know, to your commitments. But I believe from mayor to  
21 mayor that you will make sure that your staff and your  
22 city does not make a liar out of you. Okay. And you're  
23 coming here and saying, we intend to repair and do and all  
24 of that. So I'm going to take you at your word.

25 But because the City had failed to do a number of



1 things as you have very well recognized, we need to make  
2 sure that other Cities don't do what the City had done.  
3 So with that, I just want you to know I'm so relieved  
4 you're here, and I'm so happy that you took the time to  
5 come here and speak for your City. Okay.

6 MAYOR TARVER: Thank you.

7 CHAIRPERSON MARIN: With that, Mr. City Manager,  
8 you've been here.

9 MR. OCHOA: Moy buenos dias. Good morning.  
10 Thank you, Rosario Marin and other members of the Board.

11 I was here before you a couple of years ago as I  
12 had started my job as City Manager for the City. Since  
13 that time, my hair has gotten grayer, and I've lost a  
14 little more because we have gone, as the Mayor has  
15 mentioned, through some political turmoil and a difficult  
16 situation. We have learned also a lot about recycling and  
17 the laws of the state of California. And we have made  
18 good faith efforts to try to comply with those laws.

19 Having said that however -- and, again, I also  
20 must apologize to you all for not exactly total  
21 non-compliance, but I think as the presentation will  
22 demonstrate later that we failed in terms of reporting  
23 deadlines. But we were sincere and in good faith trying  
24 to implement all of these programs.

25 We have had a very, very good relationship. And

1 I also must thank Nikki and Tabatha for all of their  
2 cooperation, because it truly has been a team between them  
3 and the City politicians, the City administration, and the  
4 hauler. We would not have made the progress that we did.  
5 We would not have been able to actually complete the  
6 programs without a total cooperation from everybody.

7           Having said that, I had probably relied more on  
8 staff than maybe other Cities or other City Managers had.  
9 I don't really know. I came from Arizona not  
10 understanding all of the laws here. And by the way, the  
11 City prior to getting me from Arizona had recruited for  
12 City Manager for a year and a half. It's a very small  
13 city. It's isolated. It's 95 percent hispanic. It was  
14 in a budget deficit of \$600,000 with a \$6 million budget.  
15 It's a very rural city. And it was difficult to get  
16 staff. And it has been difficult to get staff also  
17 because of the political climate that was there before.

18           Nonetheless, I took on the challenge probably  
19 because again I came from Arizona and didn't know any  
20 better, but I'm glad I did. Really truly am glad I did.  
21 And it's been a great experience.

22           As I say that to you, I want you to know that the  
23 staff in our city when I first came on and still to a  
24 certain degree consists of a City Manager and a finance  
25 director. We have had three police chiefs since I was

1 there. So that administrative personnel hasn't been able  
2 to assist us very much. And we have had -- we were  
3 starting off and had no City Clerk to help us out with a  
4 lot of the administrative tasks that we needed. And in  
5 addition to that, when we had to -- in order to get the  
6 city out of a budget deficit, had to do layoffs. And we  
7 did those layoffs even -- we did those layoffs, and now  
8 the following year after I was there we got the budget  
9 down to a deficit of 425. And this year the latest budget  
10 we got we have a \$37,000 surplus. So we have done those  
11 things to try to get us in a fiscal situation that would  
12 allow us to at least do more things. Some of the people  
13 that were laid off we have hired back. And so we continue  
14 to make efforts to work.

15 Now having said that, I think something like that  
16 also happened with the state, because they took Nikki away  
17 from us. And without the knowledge and support that I had  
18 from the state -- when she was there, she would call me  
19 and tell me, "Enrique, you have to do this, and I need  
20 this," and so forth. And I would do it. And I think they  
21 can vouch for that. It was a little time period when they  
22 took her away from us and we missed her. I missed her. I  
23 have to be honest with you. And during that time --

24 CHAIRPERSON MARIN: Let me understand this,  
25 because we're all being puzzled. How is it we took her

1 away from you?

2 MR. OCHOA: I think she was reassigned to do  
3 education programs of some sort in another department  
4 within your programs here at the state level. And I think  
5 it might have been four or six months, but it felt like a  
6 year to me. And it really truly was reflective of the  
7 fact that I just did not know what to do.

8 BOARD MEMBER WASHINGTON: Who replaced Nikki for  
9 that four to six months?

10 MR. OCHOA: I don't want to say, because it's  
11 going to seem like that person didn't do their job. I'm  
12 sorry. Tabatha was always -- Tabatha and Nikki have  
13 always been the two that were there. But I had developed  
14 that relationship with Nikki to where she could call me, I  
15 could call her, and so forth. And I think Tabatha I saw  
16 as more of an administrative role and that higher up, so  
17 we didn't have that close of a relationship. And that's  
18 just the way that it was.

19 Since then, we have now -- what I want to make a  
20 point of as well, though, is the fact that during that  
21 time we were trying to implement some programs. And, in  
22 fact, I think what's going to happen is that the  
23 presentation is going to show that we did -- we  
24 finished -- we even did some of those programs, but the  
25 reporting was lacking. In other words, until now that we

1 have submitted all of the information, the programs are  
2 complete. In fact, some of those programs were complete.

3 And maybe I'll use an example of some of the  
4 problems that had to do with why, for example, we have a  
5 difference in terms of opinion in terms of was the program  
6 completed or not fully completed. The C&D ordinance, when  
7 we first started down this road, what I did is I shared  
8 the ordinance that we had passed had to do with C&D with  
9 the developers. We had three developers at that time in  
10 Arvin and with their construction managers. And I said,  
11 "Guys, we have to implement these programs, and you know,  
12 the building inspector is going to, you know, make sure  
13 this happens." Our building inspector for the last year  
14 and a half has been on disability.

15 So I contracted with the County to provide those  
16 services. The County, however, could not ensure just one  
17 individual. So we have whoever is available in the area  
18 is the person they send to do building inspections for us.  
19 I couldn't train all of their building inspectors to say  
20 this is what you have to do in terms of implementing our  
21 C&D ordinance. And so when they could send somebody, they  
22 would do their job of inspecting, but not necessarily  
23 implementing the C&D ordinance.

24 Luckily, the developers were, in fact, diverting  
25 their lumber and their cement and their recyclables to

1 different appropriate locations. But the tonnage reports  
2 that we needed were not there. Once Nikki came back, once  
3 we hired Roland, we got that information and we provided  
4 it. But it wasn't being done. It wasn't being done. We  
5 just did not have the information to report to the State.

6 And so again, our efforts have been in good  
7 faith. The timeliness of it, I have to admit it was not  
8 there. And it hasn't been there until now.

9 BOARD MEMBER WASHINGTON: So let me ask you. So  
10 you're saying you couldn't finish because Nikki was gone.  
11 And when Nikki came back, you were able to finish the  
12 implementation of getting your program started? Did I  
13 hear you correctly?

14 MR. OCHOA: I have to give as much credit as I  
15 can to Nikki. She has been very helpful.

16 We also hired a consultant by the name of  
17 Mr. Roland Burkert who used to work for the Kern County  
18 Waste Management Department. And he has been very helpful  
19 in terms of reporting in the appropriate way with all of  
20 the technical information that is required by the Board  
21 and Board staff.

22 CHAIRPERSON MARIN: Let me just tell you.  
23 Because you're saying it, you may not hear yourself how  
24 it's sounding. Okay. It sounds, you know -- what if  
25 Nikki never came back? You know, for whatever reason --

1 you may not understand that, in fact, it's not sounding as  
2 good as you may think it is.

3 MR. OCHOA: I'm only being truthful to you.

4 CHAIRPERSON MARIN: I appreciate that.

5 MR. OCHOA: That without her prompting us to do  
6 what we were supposed to do --

7 CHAIRPERSON MARIN: That doesn't reflect good on  
8 you.

9 MR. OCHOA: I understand. I understand. But  
10 it's the truth. I have to tell you the truth.

11 During that time period, we are there. Things  
12 are being done. But the reporting is not being done to  
13 the extent that the Board requires.

14 MS. WILLMON: Madam Chair, may I make a  
15 clarification?

16 BOARD MEMBER WASHINGTON: Hold on, Tabatha.

17 Madam Chair, I went down to Arvin. Linda  
18 Moulton-Patterson, the Chair, and I went down there. When  
19 you came to the Board, you brought a person that you guys  
20 said was dedicated. What happened to that gentleman?

21 MR. OCHOA: That gentleman was hired by the City  
22 of El Monte, South El Monte, and another --

23 BOARD MEMBER WASHINGTON: How long was it from  
24 the time you came to the Board he took the job with the  
25 City of El Monte, do you remember?

1 MR. OCHOA: It's been at least a year.

2 BOARD MEMBER WASHINGTON: No. I mean from the  
3 time you came to the Board, he's been away for about one  
4 year?

5 MR. OCHOA: Yes.

6 BOARD MEMBER WASHINGTON: Within that year  
7 according to the way we're reading this -- because this is  
8 the gentleman that was portrayed as a person who would get  
9 the city where it needs to be, brought into the Board. We  
10 were all excited. We even said, "You know what? We're  
11 going to come down and see it for ourselves." And that's  
12 what we did. We came down to visit with you guys, spent a  
13 day and a half there almost in this city, touring the  
14 city, doing things with you guys to try to see what was  
15 happening.

16 What I don't think that I'm appreciating out of  
17 the comments you're making is that because of one person  
18 not being around, it seems like everything stopped until  
19 one person comes back. And I'm hoping that that's not  
20 what you're suggesting.

21 MR. OCHOA: If I may, Madam Chair.

22 Mr. Washington, we have a City Manager and a  
23 Finance Director as the major staff of the City. That is  
24 the reality. There are a lot of issues. And I can tell  
25 you and the Mayor and City here to vouch for, I'm there



1 from 8:00 in the morning until 10:00 at night.

2 BOARD MEMBER WASHINGTON: I saw the office where  
3 you have a bed in your office.

4 MR. OCHOA: And I'm lucky at that, because my  
5 family, as you know, lives in Santa Barbara and I live in  
6 Arvin. So I can spend that kind of time.

7 I wish we had more resources to be able to hire  
8 more individuals to help us out. It's not an excuse. I  
9 just wanted to give you the reality of what was there. A  
10 City Manager who is not fully knowledgeable of all the  
11 laws of the state of California, coupled with the fact we  
12 don't have the resources to hire other individuals to help  
13 us with this kind of implementation and the appropriate  
14 technical reporting. That's what happened.

15 We were in good faith trying to do the things  
16 that had to be done. When we had guidance from the State  
17 working all together, we were doing a little bit better.  
18 There was a little time period when we didn't that have  
19 guidance. And that's what occurred. We didn't that have  
20 guidance, and we didn't have the guidance from the  
21 consultant either.

22 Again, luckily, the programs still continued to  
23 be implemented. And now with the documentation we have  
24 provided to the Board, we can demonstrate that we, in  
25 fact, completed the programs. It's just again a situation

1 where the reporting was not timely. And that's the only  
2 point I'm really trying to make. But we were always  
3 trying to do things and to try to comply in good faith and  
4 to work cooperatively with staff. Okay.

5           Based on that, what I want to let you know is  
6 that from an administrative perspective, we have scheduled  
7 meetings and we have had meetings to discuss, you know,  
8 how is it that we're going to -- what is it that we're  
9 going to do that will ensure that these programs will  
10 continue? Because we have completed them. Yes, we're not  
11 timely, but we want to make sure --

12           CHAIRPERSON MARIN: Nikki or no Nikki?

13           MR. OCHOA: Nikki or no Nikki. We have a  
14 consultant now who knows what he's doing, and I think the  
15 staff knows him. As you will see, he will demonstrate  
16 that he knows everything that has to do with recycling and  
17 reporting requirements for the state.

18           And we have -- what we'd like to propose to the  
19 Board and to the Council is that we want to continue to  
20 rely on working with staff so that with a Compliance Order  
21 or without a compliance order to submit quarterly reports  
22 regarding the programs that we are implementing, to  
23 continue doing that to ensure that you as a Board and that  
24 staff understands that we want to continue these programs.

25           As Ms. Mizwinski mentioned, letters that were

1 sent out in a situation of where we are currently  
2 negotiating, renegotiating a contract with our hauler,  
3 there are things that we had -- where we were working with  
4 them. And, again, we were working so well with them they  
5 actually made the commitment of putting their money to buy  
6 blue bins for the rest of the three-quarters of the City.  
7 They did this without us being able to implement a rate  
8 increase. And the reason that occurred, by the way, was  
9 because they were again legal questions as to how the  
10 compliance with Proposition 18 --

11 COMMITTEE MEMBER MULÉ: 218.

12 MR. OCHOA: Prop. 218 requirements. So we wanted  
13 to help that out. But we have that kind of a relationship  
14 as well. They want to work together with us. And we're  
15 willing to work together with them. Contractually, we  
16 just have to work out those details.

17 And the last point that we have found out is that  
18 one of the sayings that one of the things that the Mayor  
19 brings out and presents to people is that in the City of  
20 Arvin we are fortunate that we have one bar and seven  
21 churches. Well, having said that, the reason I mention  
22 that is we're not going to have more tin cans in the City  
23 of Arvin. We're not going to have more recycling  
24 material. We have to naturally try to bring the waste  
25 down and the garbage numbers down.

1           But our consultant will demonstrate that in terms  
2 of determining or establishing the base year, there were  
3 deficiencies there. And perhaps we need to revisit that  
4 to make sure that we are not here before you, because it  
5 may be that we may never be able to comply with a  
6 50 percent requirement of recyclables. So we want to look  
7 at that.

8           CHAIRPERSON MARIN: Let me tell you that, because  
9 regardless of what your waste is -- and there are very  
10 many cities in the same situation that you are, and they  
11 are able to reach the 50 percent. So, you know, there are  
12 ways to do it. You just have to have the commitment to do  
13 it.

14           So we will revise -- there are a number of things  
15 that we certainly can do and will do. But you cannot come  
16 in and think that we're never going to be able do it.  
17 That's what many people said 15 years ago, and today over  
18 60 percent of the cities are complying.

19           MR. OCHOA: And I appreciate the comment. I  
20 think we want to do everything we can to implement  
21 programs. I'm really only relying on information that I  
22 have from the people that are experts in the area that  
23 have said that may have been part of the problem. And if  
24 that is, we want to investigate that so that we -- if  
25 necessary, we'll change it.

1           And maybe the last comment that I would like to  
2 make is that it's a strong plea to ask you not to impose a  
3 fine. I think that it would be contrary to the good faith  
4 principle in that it's not reasonable in that we have  
5 complied with the programs. I accept and I'm telling you  
6 we were not timely in our reporting, but we were making  
7 good faith efforts to make sure the programs were  
8 implemented.

9           Also we are -- fine would be contrary to -- it  
10 would not be feasible without sufficient money for us to  
11 implement the programs and to ensure they be done on a  
12 permanent basis. And we want to make sure that that  
13 happens. So it's just a strong plea to please not fine  
14 us, because financially that would make things even more  
15 difficult for us. So I thank you very much for your time.

16           CHAIRPERSON MARIN: Thank you, Mr. Ochoa. Thank  
17 you, Mr. Mayor.

18           MAYOR TARVER: Can I just respond to Mr.  
19 Washington? He asked a question, what happened to the  
20 other gentleman that was there.

21           You know, you visited our city. Okay. But I  
22 live there. All right. You have to actually live it to  
23 know the condition the city is in. And with that bad  
24 government that was in there before, it was a number of  
25 milkers that came along with it. The guy was believable.

1 So some people took him at face value.

2 But I'm telling you now we have a consultant that  
3 has the information to move this city in a better  
4 condition in your eyes. And that's what happened to him.  
5 I came in in '04. And you said, well, that was back in  
6 '04, about a year ago. Well, I came in then.

7 We've got new Council. So some people aren't --  
8 the people that we have aboard now on the Council, we  
9 don't have to put up with that three-to-two all the time  
10 and be a part of the two all of the time. So there was  
11 some individuals that were leading this thing, where other  
12 individuals had no say.

13 So, I mean, to really get the truth, ask the  
14 hauler. He's been there a number of years. Ask him. And  
15 I think that you'll find that now you're going to find out  
16 that we have a good team in place and we're wanting and we  
17 will comply with whatever it is that you guys want us to  
18 do as far as AB 939. And it can happen and I know it can.  
19 Thank you.

20 BOARD MEMBER WASHINGTON: So for me, Mr. Mayor,  
21 it's the same song when the last majority came with  
22 Mr. Ochoa sitting there saying the same exact thing. So  
23 for me, what happens next year if you guys are in the  
24 situation where you don't comply and you find out this guy  
25 is not what he says he ought to be? I don't think the

1 blame game is the answer here.

2 MAYOR TARVER: Absolutely not.

3 BOARD MEMBER WASHINGTON: Because we've seen --  
4 from what I've seen, you probably had about five different  
5 leadership teams come through here. So that's not the  
6 answer or certainly not to lay the blame. I think we have  
7 to move forward and try to get where we need to be.

8 It sounds like you guys have done that, in the  
9 sense you have people in place now you're trying to move  
10 forward. I don't have to live there to understand you  
11 have the problems, because I understand waste and what  
12 we're supposed to be doing in statute that we're  
13 statutorily -- the authority that we have to do is to meet  
14 AB 939. And when any city I go into, whether you have  
15 money or no money or whether you have ten City Council  
16 turnovers or not, if you're not meeting what we're  
17 supposed to be doing, we have to find out why and how we  
18 get to the next level.

19 MAYOR TARVER: Absolutely.

20 BOARD MEMBER WASHINGTON: I understand the role  
21 the City Manager had to play, because he was at one point  
22 sounds like he was the City Manager, City Clerk, City  
23 Treasurer, Chief of Police, and all that.

24 MAYOR TARVER: That's what I'm talking about.

25 BOARD MEMBER WASHINGTON: At some point you have

1 to fix that stuff. You have to give up some something or  
2 you have to do something to fix it. Because we were under  
3 the impression this guy was going to come in and save the  
4 day. And here we are back two years later, and it didn't  
5 happen. So to play the blame game or to say because we  
6 have new majority or this and that, that don't really  
7 matter. It's moving forward and trying to help the City.  
8 Because you're in a situation where we have to determine  
9 whether we're going to fine you guys or not.

10 MAYOR TARVER: Right. Well, I think it goes back  
11 to the Chair's comments to me. And I took that personal.  
12 The Board is holding me responsible to see this thing is  
13 going to be done. And you know what? I'm a team player,  
14 and I'm a man of my word. And I think that the people  
15 spoke louder than anything, because we've had the district  
16 attorney in there.

17 BOARD MEMBER WASHINGTON: It sounds like you've  
18 been a black man over a city of that's 95 percent  
19 hispanic. They've got to have some kind of confidence in  
20 you.

21 MAYOR TARVER: There you go. So I'm not going to  
22 drop that ball. Thank you.

23 CHAIRPERSON MARIN: Mr. Mayor, let me -- so that  
24 we cut to the chase. Because we've all read -- and I'm  
25 sure you've seen our staff has put together a whole



1 binder. We are probably more intimately aware of your  
2 entire city functioning over the last couple of years than  
3 we all care to be.

4 So bottom line, I know your consultant is going  
5 to come in and make a presentation. We're very familiar  
6 with what the status of your situation is. For us, bottom  
7 line is, what do we do here?

8 And I want you to know that Mr. Washington has  
9 been on this Board longer than all of us here. So he's  
10 been around the block. Ever since we've been here, we've  
11 seen unfortunately only a handful of other cities that are  
12 in the same situation. You have to understand, we deal  
13 with over 500 entities. The fact that we only deal in a  
14 situation like this with a handful, it gives none of us  
15 pleasure to do that. We'd rather not be here. We'd  
16 rather not have a special hearing to assess penalties.  
17 None of us takes pleasure on that, you know. We have  
18 worked. We have tried. We have, you know. We've tried  
19 all kinds of different ways but we are here.

20 And more importantly is where we want to go from  
21 here. Mr. Washington said it very clearly. What's behind  
22 us is behind us. There's nothing we can do to change what  
23 happened yesterday, two years ago, five years ago. What  
24 we can do is what we do today and how we enable you to  
25 move forward. At the end of the day, we want you to be

1 successful. You know, we've been wanting to have success  
2 in the City of Arvin. It pains us that that has not been  
3 the case up until now.

4 So with that, I know that you want to have  
5 somebody else make a presentation, but I can tell you  
6 we're pretty familiar with where you guys are. After your  
7 further presentation, we will probably go into closed  
8 session or try to determine what would be in the best  
9 interest of the City of Arvin and ourselves.

10 MAYOR TARVER: Thank you.

11 CHAIRPERSON MARIN: But we certainly appreciate  
12 you being here.

13 MR. OCHOA: Madam Chair, our presenter is  
14 Mr. Roland Burkert.

15 (Thereupon an overhead presentation was  
16 presented as follows.)

17 MR. BURKERT: My name is Roland Burkert. I'm the  
18 President of Roland Consulting.

19 I've been with the City of Arvin for a few months  
20 now. I actually started working on the project before my  
21 contract was approved, because I understood the urgency of  
22 the situation there.

23 --o0o--

24 MR. BURKERT: You know the statistics in Arvin.  
25 The one that I'd like to draw your attention to is the

1 population of 14,400. Monolingual, non-English speaking  
2 populations, and migrant populations are typically  
3 undercounted. This is a factor in the City's ability to  
4 achieve its diversion goals.

5 --o0o--

6 MR. BURKERT: Budget history, the City Manger  
7 gave you.

8 --o0o--

9 --o0o--

10 MR. BURKERT: Of course, that caused delays. Of  
11 course, it caused lack of resources. The City turned to  
12 Mountainside. Mountainside's commitment it would  
13 implement programs. Mountainside is doing a good job in  
14 my opinion of implementing programs. Nevertheless, the  
15 City and Mountainside, although they were working  
16 together, have not kept the staff fully abreast of what's  
17 going on on the ground. And staff's frustration with  
18 what's been happening in Arvin I think has influenced the  
19 tone of the report. Not the substance, but the tone. Is  
20 the glass half full or half empty? Okay.

21 --o0o--

22 MR. BURKERT: And you're familiar with the LAP.

23 --o0o--

24 MR. BURKERT: And the LAP has been completed.

25 And because of that, my presentation is going to be

1 slightly different. I'm not going to show you that these  
2 programs are all in place.

3 --o0o--

4 MR. BURKERT: I'm going to show you these  
5 programs were in place before the dates that are in the  
6 report. I'd like to draw your attention to the table on  
7 page 1-4 and 1-5. If you're a casual reader -- and I'm  
8 not saying any of you are. I know you're all very  
9 familiar with what's been happening here.

10 But if you look at the table, it shows completion  
11 dates that are all mostly very recent dates. But the fact  
12 of the matter is C&D has been recycled in Arvin for a very  
13 long time. I'm sure you're all aware of the economic  
14 incentives that a builder has to recycle. This particular  
15 construction site, if you look at it, it's a mess. But  
16 the contractor, in fact, recycles virtually all of that  
17 material. The City has not been able to give you the  
18 documentation of that. Okay.

19 Now, Arvin has implemented a C&D recycling  
20 ordinance. I believe it's among the first in Kern County  
21 to have such an ordinance. The City Manager gave you the  
22 background on what his efforts to educate people about it.  
23 We did that again. And in addition to contractor and  
24 public education, which was quite expensive, we prepared a  
25 C&D recycling guide and put that in the hands of everyone

1 that has an outstanding building permit. We also put a  
2 form in their hand that says this is a recycling plan that  
3 you must fill out. And then this is the report that you  
4 must submit in order to get your building permit  
5 finalized. These are all requirements of the C&D  
6 ordinance.

7 And, really, I'd like to thank Mountainside  
8 Disposal, because we have a recycling coordinator, Gill  
9 Garcia, who's bilingual. He runs the garbage truck, but  
10 he gets off the truck and talks to people about what he  
11 sees in their garbage can. And Gill Garcia spent a few  
12 days last week and this week going out to each of those  
13 building permit holders at their site and handing out the  
14 materials and answering their questions. And Ray Scott  
15 from Mountainside has 14 completed recycling plans in his  
16 possession right now. There are seven still outstanding.  
17 I'm confident we'll get those completed in the next week  
18 or so.

19 --o0o--

20 MR. BURKERT: So the City is aggressively  
21 pursuing that ordinance now, and the recycling has, in  
22 fact, taken place.

23 --o0o--

24 --o0o--

25 MR. BURKERT: The ordinance is the model from

1 use. I won't bore you with everything it does.

2 --o0o--

3 MR. BURKERT: Let's look at some of the results.

4 One of the things that Nikki pointed out is that we have  
5 not reported. But this construction site here, they in  
6 fact source separate. You see the lumber is on one side.  
7 The cardboard is on the other.

8 --o0o--

9 MR. BURKERT: The drywall is separate also. A-1  
10 Construction picks up that material and takes it to  
11 various recyclers. I verified those recyclers are being  
12 used. I have not been able to verify weights, because  
13 they haven't needed weight tickets. And because they  
14 dispose of this material for free, the contractor doesn't  
15 need the weight ticket. And so we just don't have the  
16 information.

17 They are now aware they need to provide that, and  
18 they've agreed to provide that directly to the City. A-1,  
19 these are the recyclers they use, which I have verified.  
20 And A-1 cleans up at two of the major construction sites  
21 in Arvin.

22 --o0o--

23 MR. BURKERT: The other major construction site  
24 in Arvin is an apartment complex that's collected by  
25 Mountainside Disposal, and they have a mixed C&D program.

1 If you didn't know where this is headed, you would think  
2 this is going to the landfill, but in fact --

3 --o0o--

4 MR. BURKERT: -- this material is going to MRC,  
5 Metro Recycling Corporation, which Mountainside is a  
6 partner in. This facility has been on-line for a few  
7 months. All the material that Mountainside hauls now goes  
8 through here. And this facility receives between 60 and  
9 70 percent diversion depending on the input stream.

10 --o0o--

11 MR. BURKERT: We have a building inspector  
12 checklist. The building permit will not be finalized  
13 until the checklist is complete. We have a letter from  
14 the City Planning Department that they understand their  
15 responsibility that part of the plan check process is to  
16 ensure that a recycling plan is in place. And for the  
17 larger developments, that they have to have facilities to  
18 accommodate recycling in the future. So that's been taken  
19 care of.

20 --o0o--

21 MR. BURKERT: The ordinance has the penalties to  
22 force compliance.

23 --o0o--

24 MR. BURKERT: We verified through waste audits  
25 the major developments are already recycling.

1                               --o0o--

2               MR. BURKERT: This is Mountainside's diversion  
3 right here. Last month, the month of October, 32 tons  
4 were generated, of which 24 tons basically went to MRC and  
5 9.5 tons went to the landfill. When this was pointed out  
6 to the owner of Mountainside, he immediately directed that  
7 the driver -- those 9.5 tons represent two loads. The  
8 driver made the decision to go to the landfill because of  
9 old habits. It's my understanding this driver has been  
10 reprimanded and that situation will not recur. What we  
11 can expect in the future is 60 to 70 percent diversion of  
12 every load of C&D that Mountainside handles.

13               A-1 Construction, again I verified these  
14 materials listed go to these recyclers. And I hope in the  
15 next month I'll be able to report the tonnage that was  
16 actually processed.

17                               --o0o--

18               MR. BURKERT: Another thing that we did is we  
19 trained City staff, because there had been turnover. We  
20 held a meeting. And I've also been contacted with the  
21 person in the building department that deals with the  
22 public. I deal with her every two or three days. And  
23 when I go back to Arvin this week, I plan to take her out  
24 to recycling facilities so she can become familiar with  
25 them.



1 BOARD MEMBER WASHINGTON: Who is this person?

2 MR. BURKERT: Her name is Carol.

3 BOARD MEMBER WASHINGTON: What's her position?

4 MR. BURKERT: She's a Clerk.

5 BOARD MEMBER WASHINGTON: For the entire City, or  
6 for waste or --

7 MR. OCHOA: No. We decided to hire a part-time  
8 individual on a temporary basis and made her a permanent  
9 assistant to the building inspector. Since we don't have  
10 a permanent building inspector, at least we have somebody  
11 there permanently.

12 BOARD MEMBER WASHINGTON: Sorry about that.

13 MR. BURKERT: Not a problem.

14 --o0o--

15 MR. BURKERT: Public outreach, I've explained we  
16 held meetings, public notice, and then went to every site  
17 and hand delivered the material.

18 --o0o--

19 MR. BURKERT: Are there any questions about the  
20 C&D program? And hopefully I've convinced you this  
21 program is substantial. And in substance, it was in place  
22 long before the dates that are shown in this table.

23 BOARD MEMBER MULÉ: When was the ordinance  
24 passed?

25 MR. BURKERT: The ordinance was passed in January

1 of '05.

2 BOARD MEMBER MULÉ: January of '05. So here we  
3 are in November, and you're just now receiving tonnage  
4 reports.

5 MR. BURKERT: This is the second go-round of the  
6 training. The first training was done by the City  
7 Manager. And there was turnover in staff, building  
8 inspector, and other folks. I think the ball was dropped  
9 in the middle there, and we have redone all of the  
10 training.

11 BOARD MEMBER PETERSEN: The MRF that you pointed  
12 out in the slide, is that a construction and demolition  
13 debris MRF or just a regular residential?

14 MR. BURKERT: It was purpose built as a C&D MRF.

15 BOARD MEMBER PETERSEN: And your background in  
16 your company?

17 MR. BURKERT: My consulting company has been in  
18 business for about six years. Prior to that, I worked  
19 with Kern County Waste Management for seven years as a  
20 Special Projects Manager, essentially Assistant Director  
21 to the department head.

22 BOARD MEMBER PETERSEN: So you're very familiar  
23 with the area?

24 MR. BURKERT: Absolutely. I've lived there for  
25 25 plus years and have been working with the waste

1 management field for about 13, 14 years.

2 CHAIRPERSON MARIN: Any further questions?

3 BOARD MEMBER WASHINGTON: Yeah, Madam Chair.

4 What I think would be interesting, tell us maybe in terms  
5 of building in that city -- I was trying to buy one of the  
6 homes when I was there. They were beautiful homes that  
7 they were building. And that's not being funny. They  
8 really were. We did a tour of some of the homes there.  
9 How many homes have you guys built? I think it was a year  
10 and a half ago since we've been there and it looks like  
11 it's more construction. How many homes have you guys  
12 built in the city?

13 MR. OCHOA: Madam Chair, Mr. Washington, we were  
14 averaging anywhere between 100 and 150 per year at the  
15 time that you came in. Projected wise now, you are very  
16 astute in observing that we are going to explode. We are  
17 probably -- we have already reviewed plans for various  
18 projects, and we expect that at least 250 or 300 homes to  
19 be built this upcoming year.

20 As that is happening, we're trying to gear up to  
21 make sure that things happen the way they should. We have  
22 revived the redevelopment agency and, in fact, have a  
23 reallocation bond. We have some more money now. And  
24 we're looking at Mella Roos to try to impose service fees  
25 so that we can generate moneys to be able to implement

1 police protection services and other services such as the  
2 ones that we're talking about. So we are also doing that  
3 in order to increase the infrastructure of the city, the  
4 sewer system. And so I have to tell you that we are  
5 trying to make an organized effort to prepare for what's  
6 coming to Arvin.

7           There's a developer from the Sacramento area who  
8 just bought 320 acres and that is Dunmore Properties. And  
9 we have a national developer who's coming into town.

10           Apologize for my voice. I have a medical  
11 condition that I developed.

12           Now as we talk about permanency, when Mr. Roland  
13 Burkert came in and we did the training with staff, since  
14 we haven't the permanent inspector, we hired a permanent  
15 assistant. But we went a little further. We implemented  
16 a policy within the process to make sure that the new  
17 developments will have available areas for regular or  
18 recycling disposal containers as well as the regular. And  
19 in addition to that, in the forms for inspection, we have  
20 the requirements that they have to sign off on the actual  
21 forms that they have submitted the plans for recycling and  
22 that they have submitted the tonnages. So we have  
23 reordered all of those forms to make sure that it won't  
24 matter which inspector is there, because they're going to  
25 have to sign off on that. We have made those kind of

1 technical changes to ensure permanency to the programs  
2 that we have described.

3 BOARD MEMBER WASHINGTON: And Madam Chair, I only  
4 raise that to make a point that the population will  
5 certainly go out the roof in terms of the homes because  
6 the medium income, if I remember, is very low in that  
7 town. And folks affording the homes will be people from  
8 the outside like myself who come to town. They told me I  
9 couldn't come for whatever reason. When I told them I  
10 represented areas in South Los Angeles, they told me to  
11 stay there. But folks will be able to afford those homes.

12 And I think developers will come in and big  
13 companies will buy up the homes, because they are  
14 beautiful homes. And it's going to increase with people.  
15 So you really want to make sure that you have all your  
16 programs in place, because when people come, the materials  
17 and things happen. So I just want to raise that.

18 CHAIRPERSON MARIN: I know. But Mr. Washington,  
19 the only reason why I smile when I said that, because when  
20 we went to the green homes, you also wanted to buy one of  
21 those. So don't invite him anywhere. Because wherever he  
22 goes, he wants to buy a home there. So okay.

23 Do you have anything more, Mr. Burkert?

24 MR. BURKERT: Yes, Ma'am.

25 --o0o--

1           MR. BURKERT: Item 2 in the LAP was mandatory  
2 residential curbside. That's in place at 100 percent of  
3 the homes. In fact, there's also a mandatory green waste  
4 program at all of the homes. And the green waste program  
5 was expanded by the hauler to include food waste. We're  
6 very fortunate that we have a facility nearby that's  
7 permitted to compost green waste and food waste together.

8                               --o0o--

9           MR. BURKERT: The set-out rate for the blue  
10 barrel program on this street is 75, 80 percent.  
11 Citywide, it's about 50 percent.

12                              --o0o--

13           MR. BURKERT: Now it's important to know that  
14 this is another area where it looks a little -- the  
15 reality is a little bit better than what you get from  
16 scanning the table. Arvin actually implemented a pilot  
17 program back in 2002 and continued improving those pilot  
18 programs, and it was finally made mandatory in 2005. But  
19 it wasn't as if they waited until the last minute to get  
20 that done. The tonnages that you see here include the  
21 blue barrels at the businesses, because it's not possible  
22 to weigh them separately. The route collects businesses  
23 and residential at the same time.

24                              --o0o--

25           MR. BURKERT: So we've had a mandatory

1 residential curbside program for some time.

2 I'd like to move on if there's no questions.

3 --o0o--

4 MR. BURKERT: The residential green waste  
5 according to the report was not completed until September  
6 28th. It's true enough that the ordinance was not adopted  
7 until September. But an automated green waste program was  
8 put in place back in 1997 when the current hauler took  
9 over operations from the City. And prior to that, the  
10 City had a green waste program that was done manually with  
11 tossing the cans in the truck. Mailers and flyers, a  
12 public education program has been in place since as early  
13 as '97 when the carts were put out.

14 --o0o--

15 MR. BURKERT: The program was voluntarily  
16 expanded in 2004 to include food waste. It goes to CR&R.  
17 You're probably familiar with them.

18 --o0o--

19 MR. BURKERT: Here are the tonnages that were  
20 achieved in the last four or five years in the green waste  
21 program. So this is, you know, when the City says, hey,  
22 we tried. We put in a good faith effort. Here's an  
23 example of where they did. They didn't meet all of the  
24 letter of the requirements.

25 --o0o--

1           MR. BURKERT: But look here. This is what  
2 happened when the food waste program went in. And I found  
3 this astonishing, because I'm used to food waste being a  
4 very small fraction in the diversion program. They  
5 achieved a significant improvement in the green waste  
6 tonnage when they allowed the food waste to go into it.  
7 This it was done voluntarily by the City and Mountainside.

8                               --o0o--

9           MR. BURKERT: Any questions about the green waste  
10 program?

11          BOARD MEMBER PEACE: Did you say you had a green  
12 waste program since 1997?

13          MR. BURKERT: Actually, it was implemented before  
14 that. But I don't know when. 1997 was when Mountainside  
15 Disposal took over the refuse collection for the City.  
16 And in 1997, Mountainside Disposal placed green waste  
17 containers at every single-family residential home in the  
18 City.

19          BOARD MEMBER PEACE: Is that what you found,  
20 staff?

21          MS. WILLMON: Yes. At the time we did the Local  
22 Assistance Plan and were developing it, they did have a  
23 green waste program in place. However, the City had  
24 indicated they were going to be stopping that program and  
25 taking over their own. So we built in the steps for them



1 to re-implement it on their own, which is why it's in the  
2 Local Assistance Plan. So they had in fact been -- they  
3 ended up not doing that. They ended up staying with the  
4 one they currently have. So it was implemented. However,  
5 they had not necessarily monitored it or monitored the  
6 effectiveness. And the tonnages went down. And so they  
7 had discussed that possibility of doing a mandatory  
8 ordinance. We agreed with that. At that point they did  
9 do that. It was adopted in September of this year. This  
10 is not one of the programs that we deemed them not to have  
11 been doing in the first place. So this was not one of  
12 those original six.

13 BOARD MEMBER PEACE: Thank you.

14 --o0o--

15 MR. BURKERT: Waste assessments. Many waste  
16 assessments were completed by the previous waste  
17 management consultant the City had. When he left, two  
18 large waste generators had not been completed.

19 --o0o--

20 MR. BURKERT: Those have since been done. Salter  
21 Labs, as you can see, recycled 72 percent of their  
22 material. And they do this without being told to by  
23 regulation. They do it because it makes good economic  
24 sense. They produce kits for respiratory therapy. And  
25 they have four or five different resins of plastic. And

1 the waste material is valuable, because it's very pure  
2 stream. And that's why they're able to achieve such a  
3 high recycling rate. They recycle cardboard, pallets, and  
4 beverage containers.

5 --o0o--

6 MR. BURKERT: Grimmway Frozen Foods Division, 5  
7 million pounds per year total waste. This includes  
8 trimmings from the green beans and carrots. This is an  
9 estimate, because we're basing it on truckloads rather  
10 than actual scaled weights. That material goes to animal  
11 feed. Plus they also have C&D recycling, because they  
12 constantly are adding on to their facility. They have  
13 wood recycling, cardboard program, and a beverage  
14 container program on site.

15 And what often happens when you go dumpster  
16 diving, which I did, I found a couple of cardboard boxes  
17 and two pallets in the trash dumpster. The plant manager  
18 was there, and she immediately agreed to send a memo --  
19 circulate a memo to all the staff that they need to use  
20 the recycling containers that are right there. It's  
21 simply a matter of staff training. With so many things,  
22 education and training are the key. But 75 percent  
23 diversion at Grimmway.

24 --o0o--

25 BOARD MEMBER PETERSEN: Madam Chair. On

1 education, he is right. And what plan have you put  
2 together on the communication to the community and the  
3 commercial areas to maintain your programs and put you  
4 where you need to go? Do you have a plan put together on  
5 what you're going to do?

6 MR. BURKERT: I hope you can appreciate my time  
7 has been very short and filled with a lot of activity.  
8 Education was not one of the things that was lacking, and  
9 so I haven't focused on that. But I was asked pretty much  
10 the same question by the City Council when I made a  
11 presentation to them a few weeks ago. It appears to them  
12 that many of the educational outreach programs have not  
13 been effective. They said what else can we do. It's  
14 already bilingual. Well, there's a relatively large  
15 population that speaks Mixtecan, Mixteco, a language I had  
16 never heard of. It's a dialect spoken in Central Mexico,  
17 and no one seems to know much about it. And this group of  
18 people stays pretty much to themselves. How do we reach  
19 them? They're a significant population in the city.

20 CHAIRPERSON MARIN: I know how to reach them. If  
21 you go to Counsel General in Mexico in Los Angeles, they  
22 have a very direct group with people from the Oaxaca area.  
23 And they are able to provide some assistance. They could  
24 probably write or help you write some of the materials in  
25 that -- it's not really a language. But it's a dialect.

1           MR. OCHOA:  If I may interrupt, Madam Chair.  
2   What we have done, we have the good fortune of having a  
3   gentleman by the name of Fausto Sanchez who is from  
4   Oaxaca, and he speaks Mixteco Alto.  And what we have done  
5   with him is, number one, we helped him get elected to the  
6   Education Board.  And then number two is that on various  
7   occasions when he has been on television and on the radio,  
8   we have asked him to also help us in terms of getting that  
9   information out.  So we work very closely with him.  He  
10  represents the National Congress, and we have encouraged  
11  him to do and he has done so for last three or four years  
12  La Guelaguetza festival in June.  And during that time, we  
13  try to do some educational outreach.  And anyway, just I  
14  wanted to add that to Mr. Roland's presentation, because  
15  that is a language -- or an idiom that we have about a  
16  thousand people there that benefit from this.

17           BOARD MEMBER PETERSEN:  Madam Chair, we've been  
18  doing the recycling business for 35 years.  And one of the  
19  things we found is that it's not just one mention here or  
20  one mention there.  It's a campaign, just like you're  
21  going to elect somebody.  That's what this is all about.  
22  And you have to keep it going in order to keep your  
23  participation rates up, mandatory or not.  And it works.  
24  And we use -- my programs, we translated things into five  
25  different languages to communicate in L.A.

1           So I know what you're going through and I know  
2   there's constraints on your budgets and stuff, but I think  
3   that, you know, once you get this thing going, then  
4   everybody gets involved. So costs will come down. And  
5   you should succeed.

6           MR. BURKERT: Well, there are two other things  
7   that we should mention. When we're done here, we have a  
8   meeting with John Mumma at Department of Conservation.  
9   The City of Arvin was granted a grant some time ago,  
10  100-some-thousand dollars to increase beverage container  
11  recycling. The program was never implemented. We're  
12  speaking with John about the possibility of using those  
13  grant dollars in a different way than was originally  
14  proposed.

15          I think part of the subtext of what you're  
16  hearing here today is that the City has made a fundamental  
17  change in strategy. I think the last time that there was  
18  a consultant sitting in this chair, he was talking about  
19  the City taking over this, the City taking over that,  
20  building this, and the City actually operating all the  
21  programs.

22          What I heard today is the Mayor saying he's a  
23  team player and he wants to work with the resources he has  
24  available to him. That's a fundamental change in the  
25  direction the City is going. So the grant as it was

1 written no longer would work, because it's a go-it-alone,  
2 I'm a cowboy kind of a plan. Okay. And what we're  
3 talking about now is improving the facility at the  
4 existing drop-off location. I have a photo of it. You'll  
5 see why it needs to be improved.

6           We've also been in negotiations with the  
7 Bakersfield Association for Retired Citizens. They  
8 operate a very successfull buy-back center.  
9 Unfortunately, it's on the main boulevard. So what we are  
10 trying to do is move them onto the drop-off location so  
11 they can man the drop-off location which will allow them  
12 to improve public education to increase the value of the  
13 materials that are being dropped off. Contamination is a  
14 huge issue right now. And we'll also be able to take some  
15 other types of materials, perhaps oil, perhaps have a C&D  
16 drop-off. Because with C&D, the big guys are already  
17 doing it. It's the homeowner that's going to be a  
18 problem. If we can make it convenient for the homeowner  
19 to bring their C&D there, then that improves things. And  
20 it goes right to education.

21           So what we're hoping is that we can convert that  
22 grant, use it for education and site improvement, and work  
23 with some of the other folks that are available there in  
24 the community. And I think it's been a huge step that  
25 Mountainside has designated Gill Garcia to be their

1 coordinator. And he is, in fact, making community  
2 contacts person to person, which I think is far more  
3 directive than a direct mail campaign.

4 CHAIRPERSON MARIN: Dr. Burkert, let me tell you  
5 after you finish your presentation, we are going to go  
6 into closed session. We do have another Committee that we  
7 have to prepare ourselves for. And somewhere, sometime  
8 we're going to have to eat lunch.

9 MR. BURKERT: Let me do this, if I've shown you  
10 enough that you believe it's not as bad as the report  
11 makes it out to be. The City has made a good faith effort  
12 to implement these programs. And they have focused on the  
13 big picture of getting the programs on the ground. They  
14 admit they haven't done a very good job of letting you  
15 know about it.

16 --o0o--

17 MR. BURKERT: But let's move on. Here's the blue  
18 barrel commercial program.

19 --o0o--

20 MR. BURKERT: Cardboard programs at Subway.

21 --o0o--

22 MR. BURKERT: This is at the schools doing paper  
23 and cardboard recycling.

24 --o0o--

25 MR. BURKERT: This is a food waste program behind

1 the Ranch Market, which is the largest market in town.  
2 Actually, we have a dozen of these food waste barrels  
3 there.

4 --o0o--

5 MR. BURKERT: So we have mandatory commercial  
6 recycling.

7 --o0o--

8 MR. BURKERT: The green waste program has been  
9 taken care of.

10 --o0o--

11 MR. BURKERT: Outreach programs, we just talked  
12 about.

13 --o0o--

14 MR. BURKERT: Procurement, the City has a  
15 procurement policy. They have not --

16 --o0o--

17 MR. BURKERT: They didn't report on it until  
18 late. But, in fact, they were purchasing recycled  
19 material for some time. And just overall the reporting --

20 --o0o--

21 MR. BURKERT: -- has been an issue.

22 --o0o--

23 MR. BURKERT: So sustainability, you've heard a  
24 lot about that. One of the things that I have recommended  
25 is that the City renegotiate its franchise agreement with



1 the hauler. The franchise agreement when it was put in  
2 place didn't anticipate all of the details and all of the  
3 programs that are actually on the ground today. And the  
4 only lever the City Manager has to control the hauler in  
5 that contract is termination. It's the nuclear option.

6 And I have had preliminary discussions with the  
7 hauler. They agree we need to put in some very specific  
8 performance standards with liquidated damages. We need to  
9 deal with some other ways of making this more workable  
10 both for the City and for the hauler. That's going to be  
11 our thrust for the next 90 days. And that really is the  
12 key to sustainability. Get the rates in place and make  
13 sure the hauler is being paid equitably, and make sure the  
14 City is protected and gets better control over the  
15 programs.

16 --o0o--

17 MR. BURKERT: I'd like to share just a couple of  
18 other programs Arvin has.

19 --o0o--

20 MR. BURKERT: This is the recycling drop-off  
21 area. You see they're operating on dirt. There's  
22 practically no signage there.

23 --o0o--

24 MR. BURKERT: This is B.A.R.C.'s recycling  
25 operation on the main boulevard. I think you can see why

1 we'd like to see this moved to another location.

2 --o0o--

3 MR. BURKERT: The hauler has operated bulky waste  
4 collection events. They've been reasonably successful.

5 --o0o--

6 MR. BURKERT: The City has operated hazardous  
7 waste collection events. And the City also participates  
8 in the County's regional hazardous waste program.

9 --o0o--

10 MR. BURKERT: The recycling coordinator I  
11 mentioned several times.

12 --o0o--

13 MR. BURKERT: And the County operates a number of  
14 programs that the City residents are forced to use when  
15 they go to the landfill, tires, et cetera. So there are  
16 lots of other recycling programs available.

17 --o0o--

18 MR. BURKERT: How does Arvin compare on the  
19 diversion? All of these programs are now in place. They  
20 have more than any other community in Kern County. Yet,  
21 I'm convinced that long term, even after these programs  
22 have been in place for a year, I think they're still going  
23 to have difficulty meeting the 50 percent diversion goal.  
24 I know that's not what you want to hear. But once a  
25 community has put all the programs in place and they still

1 don't meet it, then what?

2           What I'm trying to do is take a look at, wait a  
3 minute. I was around back in 1993 and '92 when the County  
4 did the Waste Characterization Study for all of the  
5 communities in Kern County. Your Board may not be aware,  
6 but at that time they didn't have scales at the landfills.  
7 Everything was done by estimation.

8                               --o0o--

9           MR. BURKERT: And I don't want to bore you, but  
10 there are all kinds of incentives, et cetera, why that  
11 base year could be bad.

12                              --o0o--

13           MR. BURKERT: Arvin's population is undercounted.  
14 We talked about that.

15                              --o0o--

16           MR. BURKERT: Take a look at this. Side loader  
17 tons, side loaders collect the residential. In  
18 Bakersfield, the average pounds per home is 185 pounds per  
19 home, per month. In Arvin, it's 330 pounds per home, per  
20 month. What's going on there? I think it's population.  
21 I think the density of residents per home is grossly  
22 undercounted by the census. And we have to take that into  
23 account.

24                              --o0o--

25           MR. BURKERT: Taxable sales occur in Bakersfield.

1 Arvin has no large retail. You go to the Wal-Mart or  
2 Costco and bring the stuff back and the garbage goes into  
3 your can in Arvin.

4 --o0o--

5 --o0o--

6 MR. BURKERT: Please understand that when I'm  
7 saying this, it's not an appeal to reduce the number of  
8 programs. It's an appeal we need to study this further.  
9 We need to get our facts together. We're not prepared to  
10 discuss it in any detail today. But there is doubt, not  
11 just about the base year, but the calculations that are  
12 being done now in jurisdictional reporting, which I'm also  
13 very familiar with.

14 --o0o--

15 BOARD MEMBER MULÉ: Mr. Burket, we're extremely  
16 aware, acutely aware of the issues with counting and  
17 reporting. And that is why our staff has been working  
18 very diligently over the last year, year and a half in  
19 looking at alternatives to our compliance system, because  
20 we know there's some flaws in it that need to be  
21 corrected. Just so you know, we're very aware of that.

22 MR. BURKERT: Thank you.

23 CHAIRPERSON MARIN: Ms. Peace.

24 BOARD MEMBER PEACE: I was just going to ask  
25 staff if they had anything to add to what they said.

1 STATE AGENCY ASSISTANCE SECTION SUPERVISOR

2 O'SHAUGHNESSY: Yes, Ms. Peace. Staff would like to refer  
3 the Board to Attachment 4 of your packet. This is a  
4 written report dated September 22nd, 2005, from the  
5 consultant outlining recommendations for the City of  
6 actions to take to fully implement the Local Assistance  
7 Plan. It does outline all of the programs.

8 And the other thing is that the Local Assistance  
9 Plan due date was three months previous to this. So  
10 that's in part what brings us to here, is the delay. And  
11 then the tasks that have been achieved up to this point.

12 The other statement is that Board staff does  
13 recognize that all programs of the Local Assistance Plan  
14 have been implemented at this point.

15 CHAIRPERSON MARIN: Somebody else wants to speak.

16 Okay. Thank you, Mr. Burkert. Thank you,  
17 Mr. Ochoa.

18 Two more people.

19 STAFF COUNSEL BLOCK: Madam Chair, just before  
20 they go. Again, Elliot Block from the Legal Office.

21 The other point I'd like to make for context, the  
22 LAP is a document -- the Local Assistance Plan is a  
23 document that is developed in agreement between the City  
24 and our staff, including the programs the City believes  
25 they can implement and with due dates they help develop.

1           CHAIRPERSON MARIN: Yeah. Okay. Thank you,

2 Mr. Block.

3           Okay. State your name for the record and your

4 association.

5           MR. SCOTT: Ray Scott, Administrative Services

6 Manager for Mountainside Disposal.

7           CHAIRPERSON MARIN: Thank you for being here.

8           MR. SCOTT: Thank you.

9           I'm the person that's been very closely connected  
10 with all of the reporting going to Ms. Mizwinski and the  
11 Board, also dealing with Arvin on a daily basis, if you  
12 want to say. And I'm very glad that you from the  
13 beginning said you want to bottom line this. You want to  
14 get to the point of this.

15           The biggest difference I can tell you from my  
16 four-and-a-half years experience since the time they gave  
17 their good faith effort to now is the fact that now we're  
18 dealing with an administration that is wanting to move,  
19 that's wanting to do something. Because just like Mr.  
20 Washington had noted, just like Mr. Ochoa had said, the  
21 prior City Manager/City Attorney brought in the last  
22 consultant who took the City on a way that just wasn't  
23 practical, trying to take over the trash. And so the City  
24 also had to undue some of the administration that was set  
25 forth but with bad direction.

1           And we as the hauler have always made a good  
2   faith effort in implementing the programs, because we knew  
3   that, yes, we're going to be here for the long haul.  
4   We're going to do what it takes to help the City of Arvin.  
5   So by coming this morning and talking to you, what I  
6   wanted to do was to give you that little bit of  
7   information that the prior administration is different  
8   than the administration now.

9           Now for the first time, as you saw in a letter  
10   just dated on the 7th of this month, we are finally in  
11   negotiations to where we can tie all this together, have  
12   the programs paid for on the tax rolls as we've always  
13   asked. But due to other elements, that wasn't happening.

14           The difference between this consultant and the  
15   consultant today is that, just like you pointed out, this  
16   consultant has lived in Kern County for 25 years, has  
17   worked with the County, understands the County recycling  
18   needs, understands the State's needs for recycling.  
19   Whereas, before you had two officials from out of state  
20   trying to change things that weren't applicable to  
21   California.

22           My, if you want to say, plea as the hauler and  
23   continuing that teamwork that the Mayor continues to talk  
24   about is that if we implement penalties today, that's  
25   going to detract from their ability to continue these.

1           Now correct me if in your Option 3 you may choose  
2 to suspend the penalty via what they do in the next year,  
3 which gives the State the assurance they need that these  
4 programs are going to be put in place and that the  
5 progress that you're looking for is going to be made  
6 without hampering the City from doing so. Because like I  
7 said, I know Walt Price, one of the owners of Mountainside  
8 Disposal. His whole heart has always been to do what is  
9 best for the citizens of Arvin. And I have to personally  
10 say by implementing a fine now -- just like the Compliance  
11 Order, Mr. Washington, when we put it in place, we said  
12 that you did it for the fact to help the City. I'm asking  
13 you to do the same thing once again to help the City  
14 realize what their responsibilities are, realize what has  
15 to be done. And then once again if they don't do it, then  
16 it's a different story. But here it's a total change in  
17 heart of what they're doing.

18           CHAIRPERSON MARIN: Thank you, Mr. Scott.

19           BOARD MEMBER WASHINGTON: Madam Chair, I just  
20 want to ask a question. When this first came up, why  
21 wasn't you here to oppose the idea they were trying to put  
22 forward?

23           MR. SCOTT: I did speak the last time we met, and  
24 I actually encouraged the Compliance Order.

25           BOARD MEMBER WASHINGTON: Before the Compliance



1 Order. Remember, they came two times. The first time --  
2 because what we could have done then is staff could have  
3 took a look at what you are complaining about now. We  
4 didn't know this back when you guys first came, because  
5 you didn't come and speak when they had all these people  
6 come and say we're going to do all this stuff, to suggest  
7 these people don't really have the outside knowledge. And  
8 maybe staff can help teach them. Maybe staff can help  
9 train them in terms of what we should be doing. You  
10 understand what I'm asking you?

11 MR. SCOTT: Yes, Mr. Washington. What I  
12 believe --

13 BOARD MEMBER WASHINGTON: Were you out of town?  
14 I'm trying to figure out where were you at based on what  
15 you're telling us right now right.

16 MR. SCOTT: At the time they got issued the  
17 Compliance Order, the consultant -- the former consultant  
18 was still on the panel. And we just wanted the Compliance  
19 Order put in place to help direct them to what they should  
20 be doing. At that time, the prior consultant was still  
21 here.

22 Now as Mr. Enrique had said, there was a gap of  
23 time between the old consultant and the person that is now  
24 currently helping move the City forward to where they're  
25 supposed to be. And so now we have a relationship that we

1 can --

2 BOARD MEMBER WASHINGTON: You guys didn't have a  
3 relationship pretty much with the last folks sounds like.

4 MR. SCOTT: It was not as cohesive as it is  
5 today.

6 BOARD MEMBER WASHINGTON: Okay.

7 CHAIRPERSON MARIN: Thank you.

8 Mr. Price, are you here to state something?

9 MR. PRICE: Basically, I'm Walt Price, President  
10 and part owner of Mountainside Disposal. Actually,  
11 probably going to be repeating.

12 And I know you've already said the blame game is  
13 not a good deal, but I want to repeat what I actually said  
14 at a Council meeting here a little less than a year ago.  
15 About a year ago this week, the people of Arvin  
16 corrected -- or helped correct a very serious problem that  
17 was in their city by replacing -- by putting two new  
18 Council members and a Mayor and a new Mayor. And what I  
19 told the people at that meeting, I said, you know, up to  
20 this time, you know, our company has always been one that  
21 would only take the high road. And for up until that  
22 time, the high road was blocked. And we don't take  
23 anything but that. But we now are on the high road.

24 And there's been some difficulty, as Mr. Ochoa  
25 said. He's had a lot of work to repair, a lot of other

1 problems that have been basically that he couldn't repair  
2 also until the people of Arvin spoke. And now that the  
3 people of Arvin have spoke, he's been working on it.  
4 We've been working together. We've had a good  
5 relationship during this last year. Obviously, we  
6 missed some -- there was some dates missed, some deadlines  
7 missed. And I think, why, you know. There's not a good  
8 answer to that right now. But I think the good answer is  
9 that we're now on the road, and we're getting there. And  
10 we've got programs in place. We've done a lot of things.

11 As a company, we did things -- we've been doing a  
12 lot of things and haven't been paid a nickle for. But we  
13 do it because we have a reputation. Our company under  
14 another corporation serves about a fourth of Bakersfield.  
15 We have been around 50 years, 50 years or more, actually.  
16 The company is actually older than me. My dad put it in  
17 place a couple years before I was born. So we have a  
18 reputation to live up to, and we plan on keeping that  
19 reputation. Our reputation is there, so it's not just  
20 Arvin. It's us, too.

21 CHAIRPERSON MARIN: Thank you, Mr. Price. We  
22 appreciate you taking the time to come before us. Thank  
23 you.

24 Mr. Petersen.

25 BOARD MEMBER PETERSEN: Just a couple questions.

1 You answered part of my first question, was you have  
2 franchises in other cities. Are those cities in  
3 compliance with AB 939 and your programs?

4 MR. PRICE: Actually, Bakersfield is, yes.  
5 Barely, but it is. And partly because it has its own  
6 green waste plan. It has its own -- you know, it  
7 actually -- of course it has more resources. But you know  
8 Bakersfield is --

9 BOARD MEMBER PETERSEN: But you have other  
10 franchises that work, and you know what you're doing?

11 MR. PRICE: Right.

12 BOARD MEMBER PETERSEN: And I'm getting the  
13 picture here now. I'm new to all this, so I was from the  
14 private sector. That's where I came from. So I  
15 understand some of the stuff to have to go through. And  
16 that you are volunteering programs up and not getting paid  
17 for it, I've been there, too. Thank you.

18 MR. PRICE: Thank you.

19 CHAIRPERSON MARIN: Thank you very much.

20 Staff, any further information the Board needs to  
21 consider before we go to closed session? Okay.

22 Any further things that any of the members of the  
23 City of Arvin want to suggest before we go to closed  
24 session? Okay.

25 We are going to go into closed session. I don't

1 suspect it's going to be a long time. If you wait for us,  
2 we will come back and give you our decision. Thank you.

3 (Thereupon the Board entered into closed  
4 session.)

5 CHAIRPERSON MARIN: Okay. Call the roll, please.

6 EXECUTIVE ASSISTANT BAKULICH: Mulé?

7 BOARD MEMBER MULÉ: Here.

8 EXECUTIVE ASSISTANT BAKULICH: Peace?

9 BOARD MEMBER PEACE: Here.

10 EXECUTIVE ASSISTANT BAKULICH: Petersen?

11 BOARD MEMBER PETERSEN: Here.

12 EXECUTIVE ASSISTANT BAKULICH: Washington?

13 BOARD MEMBER WASHINGTON: Here.

14 EXECUTIVE ASSISTANT BAKULICH: Marin?

15 CHAIRPERSON MARIN: Here.

16 Okay. We are back. Let me see. How can I put  
17 this? We have come to the conclusion that -- and we have  
18 our attorney who's going to actually read the Order. But  
19 I want you to know that we did not take this lightly.

20 This is something very serious for the City and certainly  
21 for the Board. We go in this with a heavy heart.

22 But at the end of the day, the law is very, very  
23 clear as to what our enforcement mechanisms are. And  
24 based on that, it is our hope that with the penalties and  
25 how we have structured them that they actually serve as an

1 opportunity for you guys to really do what you have said  
2 you're going to do.

3 So with that, Ms. Carter, would you be so willing  
4 to read the Order?

5 CHIEF COUNSEL CARTER: Thank you, Madam Chair.

6 Based on the evidence presented in today's  
7 hearing, the Board determined that the City of Arvin  
8 failed to comply with the Board's Compliance Order Number  
9 IWMA BR03-05. Despite the fact the City recently took  
10 substantial measures to comply with the Compliance Order,  
11 those measures failed to bring the City's overall  
12 performance to the level of good faith effort defined by  
13 Public Resources Code Section 41850 to implement its  
14 Source Reduction and Recycling Element.

15 Accordingly, the Board determined to impose  
16 penalties in the following amounts pursuant to Public  
17 Resources Code Section 41850: A one-time penalty in the  
18 amount of \$5,000 immediately due and payable. In  
19 addition, the Executive Director shall monitor through  
20 quarterly reports, and these quarterly reports will be due  
21 on April 15th, July 15th, October 15th, 2006, and January  
22 2007. That is, he will continue to monitor the City's  
23 continued program implementation over the next year. If  
24 the Executive Director determines on a quarterly basis  
25 that the City has failed to continue to implement its LAP

1 task through December 31st, 2006, it will be penalized  
2 \$18,000 per quarter. Penalties for non-compliance shall  
3 be due and payable within 30 days of assessment.

4 CHAIRPERSON MARIN: As you are very familiar,  
5 while this may sound like a lot of money, we had within  
6 our authority to charge up to \$10,000 per day for  
7 non-compliance. We believe that the citizens of Arvin  
8 deserve better than what they have had. Imposing bigger  
9 penalties will not be in the best interest of the citizens  
10 of Arvin. So that money that we would have received, we  
11 want you to spend it in doing the programs that you have  
12 said that you're going to do. Therefore, without any  
13 further comments, unless anybody else wants to say  
14 anything, this hearing is adjourned.

15 CHIEF COUNSEL CARTER: Madam Chair, I would like  
16 to announce the Board will be going into closed session  
17 for items regarding litigation under to Government Code  
18 Section 11930. Thank you.

19 CHAIRPERSON MARIN: Thank you. We wish you a lot  
20 of luck. Thank you, Mr. Mayor, again. Thank you.

21 (Thereupon the California Integrated Waste  
22 Management Board, Board of Administration  
23 recessed into closed session at 11:53 p.m.)

24 (Thereupon the California Integrated Waste  
25 Management Board, Board of Administration

1           adjourned closed session at 1:25 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, TIFFANY C. KRAFT, a Certified Shorthand  
3 Reporter of the State of California, and Registered  
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the  
6 foregoing hearing was reported in shorthand by me,  
7 Tiffany C. Kraft, a Certified Shorthand Reporter of the  
8 State of California, and thereafter transcribed into  
9 typewriting.

10 I further certify that I am not of counsel or  
11 attorney for any of the parties to said hearing nor in any  
12 way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand  
14 this 21st day of November 2005.

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23 TIFFANY C. KRAFT, CSR, RPR  
24 Certified Shorthand Reporter  
25 License No. 12277